

Monday, November 2, 2009

Division Two

**A123994 – In re Z.C., a Person Coming Under the Juvenile Court Law.
Alameda County Social Services Agency, v. Z.G.**

By The Court: The opinion in the above-entitled matter filed on October 2, 2009, was not certified for publication in the Official Reports. For good cause it now appears that the opinion should be published in the Official Reports and it is so ordered. Kline, P.J. (Certified for Publication.)

Tuesday, November 3, 2009

Division Three

A123765 – Tracy Frey, v. City of East Palo Alto.

The judgment is affirmed. Pollak, Acting P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

A124094 – Tangie Terrell, as Administrator, etc., v. Dillingham & Murphy, LLP, et al.

The trial court's order denying defendants' anti-SLAPP motion is reversed. The matter is remanded with directions to enter an order granting the motion to strike and dismissing the action. Defendants shall recover their costs on appeal. Pollak, J., We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

A122680 – Rita Kinnick, v. Saratoga Capital, Inc.

The judgment is affirmed. Pollak, Acting P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

A112377/A115513 – Susan Fedreighi et al., v. Kevin R. Mclean.

The judgment is affirmed. Appellant shall bear costs on appeal. Jenkins, J., We Concur: Pollak, Acting P.J., Siggins, J. (Not for Publication.)

**A123521 – In re H.V., a Person Coming Under the Juvenile Court Law.
Alameda County Social Services Agency/Children & Family Services, v. H.V., Sr.**

The juvenile court's order terminating appellant's parental rights is affirmed.
Jenkins, J., We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

Wednesday, October 4, 2009

Division Two

A119345, A121027 – Leonard Witheley et al., v. R.J. Reynolds Tobacco Company et al.

By The Court: It is ordered that the unpublished opinion filed herein on October 14, 2009, be modified as follows: 1. The first sentence of the paragraph commencing at the bottom of page 32 and ending at the top of page 33 is modified to read as follows, after deleting only the first four words, "It is undisputed that": Defendants and their agents made numerous misrepresentations of fact and false promises regarding the health effects of smoking and whether the case against smoking had been made. [*The remainder of the paragraph on page 33 continues without changes.*] There is no change in the judgment. Appellants' petition for rehearing is denied. Kline, P.J. (Not for Publication.)

Division Three

A124306 – In re D.Y., a Person Coming Under the Juvenile Court Law. The People, v. D.Y.

The judgment is affirmed. Pollak, J., We Concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

A122964 - & A124744 – In re Bruce A. Cerny, on Habeas Corpus.

The decision of the Board to deny Cerny parole is supported by evidence that Cerny might revert to his prior drug use and, thus, become a danger to public safety if he is released without firm, verifiable parole plans. Thus, the petitions for writs of habeas corpus are denied. Should Cerny's case factors remain unchanged, the Board should consider setting Cerny a future parole date that allows sufficient time for him to make definite arrangements for his placement, and set appropriate conditions which Cerny must meet before his release to ensure that he enters a supervised, structured and supportive environment. (See Cal. Code Regs., tit. 15, § 2402, subd. (b).) Siggins, J., We Concur: McGuiness, P.J., Jenkins, J. (Certified for Publication.)

Division Five

A124428 – The People, v. Xavier Anthony Baker.

The judgment is affirmed. Jones, P.J., We Concur: Needham, J., Bruiniers, J.
(Not for Publication.)

Thursday, November 5, 2009

Division One

A119521 – Margaret A. Seltzer, v. William Gwire.

The judgment of the trial court is affirmed. Margulies, J., We Concur: Marchiano, P.J., Graham, J.¹ (Not for Publication.)

A122920 – Cliff Gardner et al., v. Arnold Schwarzenegger et al.

The judgment is affirmed. Marchiano, P.J., We Concur: Margulies, J., Graham, J.² (Certified for Publication.)

Division Two

A121921 – The People, v. Darrin C. Saunders.

The judgment is affirmed. Kline, P.J., We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Division Three

A121742 – The People, v. Megan Wells Kinter.

A123814 – Megan Kinter, v. Marin County Superior Court, The People, R.P.I.

¹ Retired judge of the Marin County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

² Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

The judgment is affirmed. The petition for writ of mandate is denied. Siggins, J.,
We Concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

Division Four

A123064 – The People, v. Troy Cebran Sanders, Jr.

The judgment is affirmed. Sepulveda, J., We Concur: Ruvolo, P.J., Reardon, J.
(Not for Publication.)

Friday, November 6, 2009

Division Three

Friday, November 6, 2009(Continued)

A123882 – Robert K. Leung et al., v. City and County of San Francisco et al.

The judgment is affirmed. Jenkins, J., We Concur: Pollak, J., McGuiness, P.J.
(Not for Publication.)

A123270 – Dawna A. Joseph et al., v. Carolyn A. Johnson.

The order sustaining Johnson's demurrer is reversed as to plaintiffs' third and
sixth causes of action and affirmed in all other respects. The parties shall bear their
respective costs of appeal. Pollak, Acting P.J., We Concur: Siggins, J., Jenkins, J.
(Certified for Publication.)

Monday, November 9, 2009

Division One

A117254 – The People, v. Luther Peterson.

By The Court: The petition for rehearing is denied. Marchiano, P.J.

**A124537 – In re James R., et al., Persons Coming Under the Juvenile Court
Law. San Mateo County Human Services Agency, v. Maria R.**

Accordingly, the judgment is affirmed. Dondero, J., We Concur: Margulies, Acting P.J., Banke, J. (Not for Publication.)

Division Two

A123739 – Denise Musu-Hawa Hoffman, v. Zakaria M. Shahin, San Francisco County Department of Child Support Services.

The order appealed from is affirmed. Haerle, J., We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Monday, November 9, 2009

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuiness, P.J., Siggins, J. and Jenkins, J.; and B. Robbins, Deputy Clerk.

A119918 Jimmie Bonander et al.,

v.

Town of Tiburon.

Cause called and argued by Frank Ira Mulberg, counsel for appellants, and Thomas R. Curry, counsel for respondent. Cause ordered submitted.

A124134 Ralph Martin,

v.

James Knauss.

Cause called and argued by Herman Franck, counsel for appellant. There was no appearance by respondent. Cause ordered submitted.

At this point in the proceedings, Justice Siggins left the bench and Justice Pollak joined the bench.

A123659 The People,

v.

Jeffrey Daniel Norton.

Cause called and argued by Alex N. Coolman, counsel for appellant, and Ronald

Niver, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Presiding Justice McGuinness left the bench. Justice Siggins re-joined the bench and Justice Pollak presided over the remainder of the morning session.

A121044 Brenlar Investments,

v.

Helen Lynch.

Cause called and argued by Carol Anne Jasinski, counsel for appellant, and Jeanne Marie Fahey, counsel for respondent. Cause ordered submitted.

Court adjourned.

Monday, November 9, 2009(Continued)

Division Four

A125216 – In re the Marriage of Natalie v. Blair and Jeffrey C. Blair. Natalie V. Blair, v. Jeffrey C. Blair.

The order is affirmed. Sepulveda, J., We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

A124062 – The People, v. Julio Ceaser Navarette.

The judgment is affirmed. Sepulveda, J., We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

Division Five

A120508 – In re Kellie M., a Person Coming Under the Juvenile Court Law. The People, v. Kellie M.

The order is affirmed. Needham, J., We Concur: Simons, Acting P.J., Bruiniers, J. (Not for Publication.)

A121409 – The People, v. Jeffrey Tabron.

The judgment is affirmed. Simons, J., We Concur: Jones, P.J., Bruiniers, J. (Not for Publication.)

A121899 – Citizens for Civic Accountability, v. Town of Danville, Davidon Homes, R.P.I.

By The Court: It is ordered that the opinion filed herein on October 14, 2009, be modified as follows: (See Order.) The “Request for Modification Without Change in Judgment” filed on October 23, 2009, by appellant Citizens for Civic Accountability is deemed a petition for rehearing and is denied. Jones, P.J. (Not for Publication.)

A122634 – The People, v. David Glen Booth.

The judgment is affirmed. Needham, J., We Concur: Jones, P.J., Bruiniers, J. (Not for Publication.)

Tuesday, November 10, 2009

Division One

A121130 – Michael Berry et al., v. City of Antioch et al.

Tuesday, November 10, 2009(Continued)

The judgment is affirmed. Marchiano, P.J., We Concur: Margulies, J., Dondero, J. (Not for Publication.)

Division Two

A122626 – Wells Fargo Bank et al., James Neilsen.

By The Court: It is ordered that the opinion filed on October 22, 2009, be modified as follows: (See Order.) This modification does not effect a change in the judgment. The petition for rehearing is denied. Haerle, Acting P.J.

A115489 – The People, v. Arnett Helton, Jr.

The judgment is affirmed. Richman, J., We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

A122906 – The People, v. Darryl Anthony.

The judgment is affirmed. Kline, P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

Division Three

A122694 – City of Berkeley, v. U-Haul Company of California et al.

The appeal is dismissed. Jenkins, J., We Concur: Pollak, J., McGuinness, P.J. (Not for Publication.)

A123592 – The People, v. Arthur F. Appling, Jr.

A123594 – The People, v. Mario E. Matthews.

By The Court: Upon due consideration of respondents' motion to consolidate, the motion is granted and the above-referenced appeals are consolidated for purposes of briefing, oral argument (if any), and decision. Both case numbers shall appear on all

documents filed in this court. Respondent's consolidated brief remains due November 16, 2009. McGuiness, P.J.

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT, DIVISION FOUR
Tuesday, November 10, 2009

The Court convened at 9:30 a.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Reardon, Acting P.J., Sepulveda, J., and Rivera, J.; Annie Reasoner, Deputy Clerk; CHP Officer Jeffrey Borgen, Bailiff.

A122557 People

v.

Chris Emory

Cause called. J. Wilder Lee argued for appellant Emory. Deputy Attorney General Sharon Wooden argued for respondent State of California. Cause submitted.

A118549 People

v.

Michael Perrault

Cause called. Anne Beles argued for appellant Perrault. Deputy Attorney General Brent Wilner argued for respondent State of California. Cause submitted.

A122772 Julio Contreras

v.

Rico Wong

Cause called. Dennis Weaver argued for appellant Contreras. Mark Bonino argued for respondent Wong. Cause submitted.

At this point, Rivera, J., left the bench and Ruvolo, P.J., joined the bench.
Argument continued before Ruvolo, P.J., Reardon, J., and Sepulveda, J.

A212302

People

v.

Lionel Shell

Cause called. Mark Greenberg argued for appellant Shell. Deputy Attorney General Gregg Zywicke argued for respondent State of California. Cause submitted.

At this point, Reardon, J. left the bench and Rivera, J., returned to the bench.
Argument continued before Ruvolo, P.J., Sepulveda, J., and Rivera, J.

A122642

Paul Katzeff

v.

California Department of Forestry, Gregg Kuljian, and Ed Powers

Cause called. Paul Carroll argued for appellant Katzeff. Anita Ruud argued for respondent California Department of Forestry. Jared Carter argued for respondent Powers. Ryan Perkins appeared by telephone and argued for respondent Kuljian. Cause submitted.

Court was adjourned at 11:19 a.m.

Tuesday, November 10, 2009(Continued)

A122900 – In re Jennifer S., a Person Coming Under the Juvenile Court Law. The People, v. Jennifer S.

The order is affirmed. Simons, J., We Concur: Jones, P.J., Needham, J.
(Certified for Publication.)

Thursday, November 12, 2009

Division One

A123805 – In re V.A. et al., Persons Coming Under the Juvenile Court Law. Solano County Health & Social Services Department, v. R.A.

By The Court: The petition for rehearing is denied. Marchiano, P.J.

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Thursday, November 12, 2009

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Banke, Justice, Joshua Chow, Deputy Clerk, and CHP Officer Tammy Smith, Bailiff.

All parties waived the presence of Justice Margulies.

A122321 People,

v.

Daniel Elizalde

Cause called and argued by Marc Zilversmit, counsel for appellant, and David Baskind, counsel for respondent. Cause ordered submitted.

Justice Banke left the bench and Justice Dondero joined the bench.

A122169 David Stier,

v.

The People.

Cause called and argued by Amy Haddix, counsel for appellant, and Gabriel Bassan, counsel for respondent. Cause ordered submitted.

- A122229 People,
v.
Michael Barnett
Cause called and argued by Dustin Gordon, counsel for appellant, and John Vance, counsel for respondent. Cause ordered submitted.
- A122452 James Stewart et al.
v.
Rolling Stone et al.
Cause called and argued by Elizabeth McNamara, counsel for appellant, and Christopher Hunt, counsel for respondent. Cause ordered submitted.
- A122641 Everest Properties II et al.
v.
Prometheus Development Co. Inc. et al.
Cause called and argued by Bruce Adelstein, counsel for appellant, and Linda Coberly, counsel for respondent. Cause ordered submitted.
- A124189 John Mindermann,
v.
S.F. Police Credit Union.
Cause called and argued by Christopher Katzenbach, counsel for appellant, and Gail Kavanagh, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Thursday, November 12, 2009

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Dondero, Acting Presiding, Banke, Justice, Joshua Chow, Deputy Clerk, and CHP Officer James Militar , Bailiff.

A124921 Patricia Hewlett,

v.

Steven Kremer, as Administrator, etc.

Appellant did not waive Justice Margulies's presence at oral argument. Case continued to December's calendar.

A124889 1(800) Reminds Inc.,

v.

Prosodie Interactive (Canada) Inc..

Cause called and argued by Peter Kagel, counsel for appellant, and Eric Sinrod, counsel for respondent. Cause ordered submitted.

Court adjourned until Friday, November 13, 2009 at 9:00 AM.

Thursday, November 12, 2009(Continued)

Division Two

A119191 – The People, v. Calvin Choyce.

The judgment is affirmed. Lambden, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A123422 – The People, v. David Frederick Avelar.

The judgment is affirmed. Kline, P.J., We Concur: Haerle, J., Richman, J. (Not for Publication.)

A122971 – The People, v. Bryon J. Marshall. In re Bryon J. Marshall, on Habeas Corpus.

The judgment is affirmed. The petition for writ of habeas corpus is denied. Kline, P.J., We Concur: Haerle, J., Lambden, J. (Not for Publication.)

A124481 – Arlene Bell-Sparrow, v. Farmers Insurance Company.

The judgment is affirmed. Costs on appeal are awarded to defendant, Farmers. Kline, P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

Division Four

A123352 – In re A.S., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency, v. Maria S.

The judgment is affirmed. Ruvolo, P.J., We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

A120827 – The People, v. David Bom Le.

The judgment is affirmed. Ruvolo, P.J., We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Division Five

A123050 – The People, v. William E. Banks.

The trial court is ordered to recalculate the credits to which appellant is entitled as required by *People v. Buckhalter, supra*, 26 Cal.4th at page 23. The court must then prepare and forward to the Department of Corrections an amended abstract of judgment showing the recalculated credits, and showing that appellant was sentenced to an eight year sentence on count one in case number SCR31608. In all other respects, the judgment is affirmed. Jones, P.J., We Concur: Needham, J., Bruiniers, J. (Not for Publication.)

Friday, November 13, 2009

Division One

A123968 – The People, v. Allan D. Shocknesse.

The judgment of conviction is affirmed. Marchiano, P.J., We Concur: Margulies, J., Dondero, J. (Not for Publication.)

A123842 – The People, v. Seneca D. Lee.

Accordingly, the judgment is affirmed. Dondero, J., We Concur: Marchiano, P.J., Banke, J. (Not for Publication.)

A119049 – Margaret A. Seltzer, v. William Gwire.

The judgment of the trial court is affirmed. Margulies, J., We Concur: Marchiano, P.J., Graham, J.³ (Not for Publication.)

³ Retired judge of the Marin County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Friday, November 13, 2009

The Court convened at 9:00 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Dondero, Justice, Banke, Justice, Joshua Chow, Deputy Clerk, and CHP Officer, Tammy Smith, Bailiff.

- A123880 In re Tracy Lee Taylor on Habeas Corpus.
Cause called and argued by Heather MacKay , counsel for petitioner, and Amber Wipfler, counsel for real party in interest. Cause ordered submitted.
- A121545 People,
v.
Jermaine Merrell Hollie.
Cause called and argued by Andrew Parnes, counsel for appellant, and Sara Turner, counsel for respondent. Cause ordered submitted.
- A123494 Steven Paul Kauffman,
v.
CSAA.
Cause called and argued by Bryce Anderson, counsel for appellants, and Richard Loveland counsel for respondent. Cause ordered submitted.

Justice Dondero left the bench and Justice Margulies joined the bench.

A120387 Bruce S Portner,

v.

Jess Sullivan et al.

Cause called and argued by Malcolm Leader-Picone, counsel for appellant, and Charity Kenyon, counsel for respondents. Cause ordered submitted.

A123629 Lila Bennett et al.,

v.

Lake County Board of Supervisors.

Cause called and argued by Gail Bennett, appellant in propia persona, and Anita Grant, counsel for respondent. Cause ordered submitted.

Court Adjourned

Friday, November 13, 2009(Continued)

Division Two

A121876 – The People, v. Carlton Wayne Colbert.

The judgment is reversed. The trial court is directed to vacate its order denying suppression and enter an order granting suppression. Kline, P.J., We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Division Four

A124210 – Nam Chung Cho et al., v. Thornton, Taylor, Becker & Shinn.

The judgment is affirmed. Thornton is awarded its costs on appeal. Ruvolo, P.J., We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Monday, November 16, 2009

Division One

A121130 – Michael Berry et al., v. City of Antioch et al.

By The Court: It is ordered that the opinion filed herein on November 10, 2009, be modified in the following particulars: 1. On page 7, the second full paragraph, consisting of one sentence, is modified by deleting the word “denied” and inserting the word “granted”. The sentence will now read: The trial court properly granted the motion for summary judgment. There is no change in the judgment. Marchiano, P.J. (Not for Publication.)

Division Three

A124134 – Ralph Martin, v. James Knauss.

The order of the trial court is affirmed. Siggins, J., We Concur: McGuinness, P.J., Jenkins, J. (Not for Publication.)

Division Four

A123011 – Baccarat Fremont, LLC, v. Alameda County Flood Control and Water Conservation District et al.

The judgment is affirmed. Reardon, J., We Concur: Ruvolo, P.J., Sepulveda, J.
(Not for Publication.)

Tuesday, November 17, 2009

Division Two

A122436, A122442 – Stoneridge Homeowners Association et al., v. Saddleback Homeowners Association.

The judgment is affirmed. Haerle, Acting P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Tuesday, November 17, 2009

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Haerle, J., Lambden, J., Richman, J., Officer Singh and I. Santos, Deputy Clerk.

At this point of the proceedings, Presiding Justice Kline announces that he will not be on the panel for the first case but will be on the panel for the remainder of the cases. Justice Haerle will be the Acting Presiding Justice on the first case.

A123228 The People,

v.

Darrell Washington.

Cause called and argued by Patricia Cooney, counsel for appellant, and Amy Haddix, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

At this point of the proceedings, Justice Richman leaves the bench.

A124488 In re Stephen Duane Chiara on Habeas Corpus.

Cause called and argued by Stephen B. Bedrick, counsel for petitioner, and Michael E. Banister, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A122751 In re A.D., a Person Coming Under the Juvenile Court Law.

The People,

v.

A.D.

Cause called and argued via teleconference by Violet Grayson, counsel for appellant, and Christina Vom Saal, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A121509 The People,

v.

Steven Houston.

Cause called and argued by Paul Kleven, counsel for appellant, and Christina Vom Saal, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A122018 Robert Sprague,

v.

Curtis Kekoa, Jr.

Cause called and argued by Armen George, counsel for appellant, and N. Lee Ormasa, counsel for respondent. Submission deferred.

Court recessed until 1:30 p.m.

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION TWO

Tuesday, November 17, 2009

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Lambden, J., Richman, J., Officer Singh and I. Santos, Deputy Clerk.

A122393 The People,

v.

Ralph Chapman.

Cause called and argued via teleconference Violet Grayson, counsel for appellant, and Violet Lee, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A117459 Borrette Lane Estates,

v.

Richard E. Warren.

Cause called and argued by Anthony Ricucci, by special appearance for appellant Richard E. Warren, and Lewis Warren, counsel for respondent. Cause ordered submitted.

A117521/ John Clifton Elstead,

A119606 v.

JP Morgan Chase Bank et al.

Cause called and argued by John Clifton Elstead, counsel for appellant, and Brett Watson, counsel for respondent. Cause ordered submitted.

A122575 Showplace Square Lofts Owners Association,
v.

Michael Mead et al.

Cause called and argued by Robert Aune, counsel for appellant, and John Carey, Jr., counsel for respondent. Cause ordered submitted.

A122026/ Jorge Chacon et al.,
A123889 v.

Edward Litke et al.

Cause called and argued by Michael Johnson, counsel for appellant, and Ray Cardozo, counsel for respondent. Cause ordered submitted.

COURT ADJOURNED.

Tuesday, November 17, 2009(Continued)

Division Three

A123677 – The People, v. Benjamin Moreno, Jr.

The judgment is affirmed. McGuiness, P.J., We Concur: Siggins, J., Jenkins, J.
(Not for Publication.)

Division Four

A125289 – Lois Farrell, v. Donald R. Farrell.

The order is affirmed. Costs on appeal are awarded to Lois. Ruvolo, P.J., We
Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Division Five

**A115453 – Peter E. Lippett et al., as Successor Trustees, etc., v. Frank E.
Lembi et al.**

**A116342, A117583 – Frank Lembi et al., v. Peter E. Lippett et al., as
Successor trustees, etc.**

The judgment is A116342 is affirmed. The orders in A115453 and A117583 are
affirmed. Respondents shall recover their costs on appeal. (Cal. Rules of Court, rule
8.27(a)(1) & (2).) Simons, J., We Concur: Jones, P.J., Needham, J. (Not for
Publication.)

Thursday, November 19, 2009

Division One

**A121847 – Conservatorship of the Person and Estate of Jacqueline B.
Public Guardian of Marin County, v. Jacqueline B.**

The portion of the trial court's order appointing an LPS conservator is affirmed.
The imposition of special disabilities stated in the court's April 2008 order is vacated.
Margulies, J., We Concur: Marchiano, P.J., Graham, J.⁴ (Not for Publication.)

⁴ Retired judge of the Marin County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A123131 – In re S.H., a Person Coming Under the Juvenile Court Law. San Mateo County Human Services Agency, v. R.H.

Thursday, November 19, 2009(Continued)

The juvenile court's findings and orders terminating Mother's parental rights, determining the minor is adoptable, and ordering a permanent plan of adoption are conditionally reversed. The matter is remanded to the juvenile court with directions to proceed in compliance with the notice provisions of the ICWA and section 224.2, in accordance with the views expressed in this opinion. If, after proper notice to the potentially affected tribes, the court finds that the minor is an Indian child, the juvenile court shall proceed in accordance with the ICWA and section 224 et seq. If, however, its findings and orders terminating parental rights, determining the minor is adoptable, and ordering a permanent plan of adoption. Margulies, J., We Concur: Marchiano, P.J., Dondero, J. (Not for Publication.)

A122516 – 10 Box Z LLC, Lani Cooke et al.

By The Court: The petition for rehearing is denied. Marchiano, P.J.

Division Two

A124918 – The People, v. Michael L. Mount.

The order revoking appellant's probation is affirmed. Haerle, Acting P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

A124183 – The People, v. Lyle P. Bynum.

The judgment is affirmed. Haerle, J., We Concur: Haerle, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

Division Four

A123707 – The People, v. Marc Anthony Bryant.

The judgment is affirmed. Reardon, J., We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

A121302 – The People, v. Lionel Shell.

The judgment is affirmed. Sepulveda, J., We Concur: Ruvolo, P.J., Reardon, J.
(Not for Publication.)

**A124638 – In re the Marriage of Eddie H. Frate and Georgina M. Frate. Eddie
H. Frate, v. Georgina M. Frate.**

The order is affirmed. Ruvolo, P.J., We Concur: Sepulveda, J., Rivera, J. (Not
for Publication.)

MINUTES
COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

Thursday, November 19, 2009

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J., Simons, J., Needham, Jr., J., Bruiniers, J., and Eric F. Cyman, Deputy Clerk.

A122068 Janet Jacobsen,
A122712 Claudine Swickard
v.
Carol Ann Erickson,
Consolidated causes called and argued by Scott D. Noble and Cary L. Dictor, counsel for appellants, and by Lawrence A. Baker, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Needham left the bench and Justice Bruiniers entered.

A125073 Certain Underwriters ay Llyod's London,
v.
Etrade Group, Inc.,
Cause called and argued by Dennis P. Maio, counsel for appellant, and by Michael L. Fox, counsel for respondent. Cause ordered submitted.

A122108 The People,
v.
Paul Mitchell,
Cause called and argued by Barry M. Karl, counsel for appellant, and by Allen R. Crown, counsel for respondent. Cause ordered submitted.

A122652 Carolyn Burton,
v.
Frederick Furth,
Cause called and argued by Carolyn Burton, appellant, and by Susan Handelman, counsel
for respondent. Cause ordered submitted.

A123858 Serquina Seguindo,
v.
Crogan's Bar and Grill,
Cause called and argued by Jacq M. Wilson, counsel for appellant, and by Mark R.
Mittelman, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Bruiniers left the bench and Justice Needham entered.

A123543 David Barnes et al.,
v.
Ronald Webb et al.,
Cause called and argued by Michael Babitzke, counsel for appellant, and by Henry A. Wirta
and Frederick D. Baker, counsel for respondent. Cause ordered submitted.

A123730 Christopher Hall,
v.
Bennie J. Lewis,
Cause called and argued by Adam S. Gruen, counsel for appellant, and by David J.
Mattingly, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Simons left the bench and Justice Bruiniers entered.

A124023 Eugene Schneider,
v.
Patricia Alice Jackson et al.,
Cause called and argued by Eugene Schneider, appellant, and by Erika Copenhaver, counsel
for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

A122411 The People,
v.
Joel Clayton Allen, Jr.,
Cause called and argued by Steven S. Lubiner, counsel for appellant, and by Allan Yannow,
counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Bruiniers left the bench and Justice Needham entered.

A122768 Cellphone Termination Fee Cases,
Cause called and argued by Dominic Surprenant, counsel for appellant, and by Robert Branson, counsel for respondent and cross-appellant. Cause ordered submitted.

At this point in the proceedings Justice Jones left the bench and Justice Bruiniers entered.

A123200 The People,
v.
Melton Lara,
Cause called and argued by John F. Lee, counsel for appellant, and by Donna M. Provenzano, counsel for respondent. Cause ordered submitted.

Court adjourned at 2:31 p.m.

Friday, November 20, 2009

Division One

A123040 – In re Q.F., a Person Coming Under the Juvenile Court Law.

The judgment is affirmed. Margulies, J., We Concur: Marchiano, P.J., Dondero, J. (Not for Publication.)

A126083 – J.T., v. The Superior Court of Alameda County, Alameda County Social Services Agency, R.P.I.

The request for stay is denied and the petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd, v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) The decision is final in this court immediately. Dondero, J., We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Five

A123745 – Eugene Schneider, v. Juanita Elliott et al.

The trial court's order is affirmed. Costs on appeal are awarded to respondents. Simons, J., We Concur: Jones, P.J., Bruiniers, J. (Not for Publication.)

A123806 – In re Savannah Z., et al., Persons Coming Under the Juvenile Court Law. Sonoma County Human Services Department, v. Santos Z.

The juvenile court's order is affirmed. Simons, J., We Concur: Jones, P.J., Bruiniers, J. (Not for Publication.)

Monday, November 23, 2009

Division One

A122719 – The People, v. Michael Stuart Meekins.

Accordingly, the judgment is affirmed. Dondero, J., We Concur: Margulies, Acting P.J., Banke, J. (Not for Publication.)

A123371 – In re S.C., a Person Coming Under the Juvenile Court Law. The People, v. S.C.

The judgment of the trial court is affirmed. Margulies, J., We Concur: Marchiano, P.J., Dondero, J. (Not for Publication.)

Monday, November 23, 2009(Continued)

A122920 – Cliff Gardner et al., v. Arnold Schwarzenegger et al.

By The Court: It is ordered that the opinion filed herein on November 5, 2009, be modified in the following particulars: (See Order.) There is no change in the judgment. Marchiano, P.J. (Certified for Publication.)

Division Three

A121881, A122979 – In re D.L., a Person Coming Under the Juvenile Court Law. Contra Costa County Bureau of Children and Family Services, v. J.L.

The orders of the juvenile court are affirmed. Siggins, J., We Concur: Pollak, Acting P.J., Jenkins, J. (Not for Publication.)

Division Four

A124491 – The People, v. David Ray Maxwell.

The judgment is affirmed. Reardon, J., We Concur: Ruvo, P.J., Sepulveda, J. (Not for Publication.)

A124332 – The People, v. Franco Ramon Rodriguez.

The judgment is affirmed. Reardon, J., We Concur: Ruvolo, P.J., Sepulveda, J.
(Not for Publication.)

A121202 – International Federation of Professional and Technical Engineers, Local 21, AFL-CIO, v. Public Employment Relations Board, San Francisco Unified School District, R.P.I.

PERB decision No. 1948 is affirmed. Rivera, J., We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

A122772 – Julio Contreras, v. Rico Wong.

The judgment is affirmed. Respondent shall recover his costs on appeal. Sepulveda, J., We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

Division Five

A123667 – Dennis Walsh, v. City and County of San Francisco.

The trial court's order denying the petition for writ of mandate is affirmed. Respondent is awarded its costs on appeal. Simons, Acting P.J., We Concur: Needham, J., Bruiniers, J. (Not for Publication.)

Monday, November 23, 2009(Continued)

A121948 – Ramzy Ayyad et al., v. Sprint Spectrum, L.P. et al.

The June 11, 2008 order denying in part Sprint's motion to seal portions of the trial transcript and certain exhibits is affirmed. Sprint shall pay Plaintiffs' costs on appeal. Bruiniers, J., We Concur: Simons, Acting P.J., Needham, J. (Not for Publication.)

A117630 – The People, v. Edward v. Ray, Jr. et al.

The judgment as to both appellants are affirmed. Bruiniers, J., We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Tuesday, November 24, 2009

Division One

A124875 – The People, v. Carol Lynn Brackeen.

There are no issues that require further briefing. The judgment is affirmed. Margulies, Acting P.J., We Concur: Dondero, J., Banke, J. (Not for Publication.)

A124926 – The People, v. Britton Mode.

Defendant was represented by counsel throughout the proceedings. No issues require any further briefing. The judgment is affirmed. Margulies, J., We Concur: Marchiano, P.J., Dondero, J. (Not for Publication.)

A122998 – The People, v. Jess Robert Whitehead.

The trial court's imposition of a five-year sentence enhancement under section 667 and its imposition of a one-year sentence enhancement under section 667.5 are vacated. The trial court is directed to enter a modified judgment imposing a total sentence of nine years four months. Margulies, J., We Concur: Marchiano, P.J., Dondero, J. (Not for Publication.)

A123494 – Steven Paul Kauffman, v. California State Automobile Association Interinsurance Bureau.

It is apparent from the record and arguments in this case that counsel struck on the idea that a policy limits section 998 offer made to only one of several insureds, rather than a policy limits settlement offer made directly to the insurer, would fly under the holdings of *Lehto* and *Strauss*. In our view, however, this strategy flies in the face of *Lehto* and *Strauss*. While counsel's efforts to obtain recompense for a severely injured client are understandable, there is no "bad faith" claim on the facts alleged here. The judgment is affirmed. Banke, J., We Concur: Marchiano, P.J., Dondero, J. (Not for Publication.)

Tuesday, November 24, 2009(Continued)

Division Two

A124628 – Marlon Estacio Pagtakhan, v. Roland Alexander et al.

The order appealed from is affirmed. Richman, J., We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

A124802 – In re R.A., a Person Coming Under the Juvenile Court Law. The People, v. R.A.

The dispositional order is affirmed. Richman, J., We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A124497 – The People, v. Dario Joseph Carafa.

The order is affirmed. Richman, J., We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

A122680 – Rita Kinnick, v. Saratoga Capital, Inc.

By The Court: Appellant's petition for rehearing is denied. Pollak, Acting P.J.

A124652 – Kory Lawrence Erland Patterson, v. California State Department of Motor Vehicles.

By The Court: The Petition for rehearing is denied. McGuiness, P.J.

A120469 – John Hus, v. California Department of Personnel Administration, California Department of Toxic Substances Control.

By The Court: The petition for rehearing is denied. McGuiness, P.J.

Division Four

A124836 – The People, v. Delbert Roy Stevens III.

The trial court did not abuse its discretion in selecting the upper term on the vandalism offense. The judgment is affirmed. Reardon, J., We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL

FIRST APPELLATE DISTRICT, DIVISION FOUR

Tuesday, November 24, 2009

The Court convened at 9:30 a.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Ruvolo, P.J., Sepulveda, J., and Rivera, J.; Annie Reasoner, Deputy Clerk; CHP Officer Ricky Franklin, Bailiff.

A122557 People

v.

Bruce Braun

Cause called. Ozro Childs argued for appellant Braun. Deputy Attorney General Aileen Bunney argued for respondent State of California. Cause submitted.

A125496 Tarrant Bell Property, LLC, et al,

and

v.

A125714 Alameda County Superior Court

Reynaldo Abaya and

Spanish Ranch LLP,

Real Parties in Interest

Cause called. Robert Williamson argued for petitioner Tarrant Bell Property. Henry Heater argued for real party in interest Reynaldo Abaya. Frank Ozello argued for real party in interest Spanish Ranch LLP. Margaret Drugan was also present on behalf of Tarrant Bell Property but did not address the court. Causes submitted.

Court was recessed at 10:00 a.m.

Tuesday, November 24, 2009(Continued)

Division Five

A123691 – In re J.G., a Person Coming Under the Juvenile Court Law.

The conditions set forth above are stricken. In all other respects, the disposition is affirmed. Jones, P.J., We Concur: Simons, J., Needham, J. (Not for Publication.)

A121271, A121978 – Hanna Hilsenrath et al., v. Nixon Peabody LLP, et al.
By The Court: The petition for rehearing is denied. Jones, P.J.

Division Five

A122242 – Stephen Wollmer et al., v. City of Berkeley et al., 1950 MLK, LLC, R.P.I.

By The Court: Pursuant to California rules of Court, rules 8.1105 and 8.1110, the opinion filed on October 30, 2009 is certified for publication with the exception of part II sections D through and including F.1. The opinion filed in October 30, 2009, is modified as follows: (See Order.) The request for partial publication by Respondent, City of Berkeley, is granted. All other requests for publication are granted in part. Jones, P.J.

A123543 – David Barnes et al., v. Ronald Webb, dba Pinecrest Lake Resort et al.

The summary judgments entered in favor of defendants are affirmed. Defendants shall recover their costs on appeal. Needham, J., We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Wednesday, November 25, 2009

Division Two

A121398 – Gateway Bank, FSB, v. Tigor Title Company of California, et al.

The judgments are affirmed. Respondents Chicago Title and Tigor are awarded their costs on their appeal. Kline, P.J., We Concur: Haerle, J., Lambden, J. (Not for Publication.)

A125187 – In re T.C., a Person Coming Under the Juvenile Court Law. The People, v. T.C.

The judgment is affirmed. Lambden, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

Wednesday, November 25, 2009(Continued)

A120629 – The People, v. Ricardo Humberto Zambrano.

The judgment is affirmed. Lambden, J., We Concur: Haerle, Acting P.J., Richman, J. (Not for Publication.)

A123458 – Hua Cao Xu et al., v. Jerome J. Ghigliotti, Jr.

The order denying the special motion to strike is affirmed. Plaintiff-respondents are awarded their costs on appeal. Kline, P.J., We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Division Three

A124094 – Estate of Christina Ryan. Tangie Terrell, Individually and as Administrator, etc., Dillingham & Murphy, et al.

By The Court: The petition for rehearing is denied. McGuiness, P.J.

A126281 – Paulo Naranjo, v. California Unemployment Insurance Appeals Board, et al., and Ws Young Consulting, Inc., R.P.I.

Respondents' motion to dismiss the appeal is granted and the appeal is dismissed. Appellant's motions (1) impose sanctions against respondents and (2) require respondents to secure separate counsel are denied. Respondents are awarded costs on appeal. McGuiness, P.J., We Concur: Pollak, J., Jenkins, J. (Not for Publication.)

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Wednesday, November 25, 2009

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuiness, P.J., Siggins, J. and Jenkins, J.; and F. Castuera, Deputy Clerk.

A121348 Menlo Business Park,

v.

City of Menlo Park.

Cause called and argued by Steven Cohen, counsel for appellant, and Gregory Klingsporn, counsel for respondent. Cause ordered submitted.

A123954 Geza Polony,

v.

Ana Polony.

Cause called and argued by Geza Polony, appearing In Propria Persona. There was no appearance by respondent Ana Polony. Cause ordered submitted.

At this point in the proceedings, Jenkins, J. left the bench and Justice Pollak joined the bench.

A120722 The People,

v.

William Francis Ghazey.

Cause called and argued by Dennis Riordan, counsel for appellant, and David Rose,

counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Presiding Justice McGuiness left the bench. Justice Jenkins re-joined the bench and Justice Pollak presided over the remainder of the morning session.

A122858 State of California, Dept. of Transportation,

v.

State Farm Mutual Automobile Insurance Company.

Cause called and argued by Sammy Obaid, counsel for appellant, and Mark Bonino, counsel for respondent. Cause ordered submitted.

Court adjourned.

Wednesday, November 25, 2009(Continued)

Division Four

A121529 – The People, v. Jedidiah A. Shoemaker.

The judgment is affirmed. Rivera, J., We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

Division Five

A125034 – The People, v. Maurice Thomas.

The judgment is affirmed. Jones, P.J., We Concur: Needham, J., Bruiniers, J. (Not for Publication.)

Monday, November 30, 2009

Division One

A124021 – In re R.S., a Person Coming Under the Juvenile Court Law. Del Norte County Department of Health and Human Services, v. M.T. et al.

The order of December 19, 2008, is reversed.⁵ Marchiano, P.J., We Concur: Margulies, J., Banke, J. (Certified for Publication.)

Division Two

A123781 – The People, v. Thomas W. Haner.

The trial court's order denying appellant's motion to dismiss the petition extending his commitment is reversed and the trial court directed to grant that motion. The matter is remanded to the superior court for the entry of such an order and further proceedings consistent with this opinion, including possible civil proceedings as noted above. Harele, Acting P.J., We Concur: Lambden, J., Richman, J. (Not for Publication.)

⁵ The motion of minor's counsel to strike references to Dr. Blake Carmichael's report from respondent's brief is denied as moot in the light of the controlling issues on appeal.

A124292 – The People, v. Anthony Milar Copeland.

The judgment of conviction is affirmed. The clerk of the trial court is directed to prepare and amended abstract of judgment showing under “Financial Obligations” that defendant is liable for \$120 “per PC 1202.4(b),” and to forward a certified copy to the Department of Corrections and Rehabilitation. Richman, J., We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Monday, November 30, 2009(Continued)

A122144 – The People, v. Deandre Austin.

By The Court: The opinion filed herein on October 30, 2009, is modified as follows: (See Order.) The petition for rehearing is denied. Kline, P.J. (Not for Publication.)

A117521, A119606 – John Clifton Elstead, v. JP Morgan Chase Bank et al.

We affirm the trial court’s summary judgment regarding all but one of Elstead’s cause of action, that being for breach of contract. We vacate the trial court’s judgment, including as amended to award of attorney fees, and remand this matter to the trial court for further proceedings and orders consistent with his opinion. We dismiss Elstead’s appeal (A119606) of attorney fees award without prejudice, as moot. The parties are to bear their own costs of appeal. Lambden, J., We Concur: Kline, P.J., Richman, J. (Not for Publication.)

Division Three

A124320 – The People, v. Dana Dwayne Hatch.

The order requiring defendant to pay \$650 in victim restitution is reversed. Siggins, J., We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

A124884 – Richard Sander et al., v. The State Bar of California et al., Dwight Aarons et al.

The appeal is dismissed. Siggins, J., We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

A121526 – Christopher Yanke, v. City of Oakland et al.

The trial court’s order denying Yanke’s petition for a writ of mandate is affirmed. The City shall recover its costs on appeal. McGuiness, P.J., We Concur: Pollak, J., Jenkins, J. (Not for Publication.)

A121348 – Menlo Business Park, LLC, v. City of Menlo Park, et al., Casa Dei Bambini School, Inc., R.P.I.

The final statement of decision filed March 6, 2008 is affirmed. Respondents are awarded costs on appeal. McGuiness, P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

A124674 – In re M.L., a Person Coming Under the Juvenile Court Law. The People, v. M.L.

A125858 – In re M.L., on Habeas Corpus.

The judgment is affirmed. The petition for a writ of habeas corpus is denied. McGuiness, P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

Monday, November 30, 2009(Continued)

A123954 – In re the Marriage of Geza E. Polony and Ana R. Polony, v. Ana R. Polony.

The trial court's order is affirmed in all respects except that the award of attorney fees of \$1,000 in favor of wife is reversed. The parties shall each bear their own costs on appeal. Jenkins, J., We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

Division Four

A122899 – The People, v. Jim Ray Williams.

The judgment is affirmed. Ruvolo, P.J., We Concur: Reardon, J., Rivera, J. (Not for Publication.)

A123397 – The People, v. Craig Lamont Brown.

The trial court is directed to modify the judgment to reflect two additional days of presentence custody credit. In all other respects, the judgment is affirmed. Reardon, Acting P.J., We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

A124676 – In re A.I., a Person Coming Under the Juvenile Court Law. The People, v. A.I.

The dispositional order is affirmed. Sepulveda, J., We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

A125186 – The People, v. Donnie Ray Perry.

There are no meritorious issues to be argued on appeal. The judgment is affirmed. Sepulveda, J., We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

Division Five

A121520 – The People, v. Joseph Davis, Jr.

The judgment is affirmed. Simons, J., We Concur: Jones, P.J., Bruiniers, J. (Not for Publication.)

A122411 – The People, v. Joel Clayton Allen, Jr.

The abstract of judgment is ordered corrected to reflect appellant's entitlement to 74 days of actual credit and 36 days of conduct credit. The trial court shall direct delivery of the corrected abstract of judgment to the Department of Corrections and Rehabilitation. The judgment is otherwise affirmed. Simons, J., We Concur: Jones, P.J., Bruiniers, J. (Not for Publication.)

Monday, November 30, 2009(Continued)

A122068, A122712 - Janet S. Jacobsen et al., v. Carol Ann Erickson.

The matter is remanded to the trial court so it can prepare a modified judgment that is consistent with the views expressed in this opinion. Costs to appellants. Jones, P.J., We Concur: Simons, J., Needham, J. (Not for Publication.)